

John J. Harris (SBN 93841)  
**CASSO & SPARKS, LLP**  
 13300 Crossroads Pkwy. North, Suite 410  
 City of Industry, CA 91746  
[jharris@cassosparks.com](mailto:jharris@cassosparks.com)  
 Telephone: 626.269.2980

Attorneys for Creditor, Kings County  
 Development Limited

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

In Re  
 TEMBLOR PETROLEUM  
 COMPANY, LLC  
 Debtor-in-Possession.

CASE NO.: 2020-11367

Chapter 7

**DC: JMV-1  
 DMG-7**

**OBJECTIONS, OPPOSITION AND  
 RESPONSE OF KINGS COUNTY  
 DEVELOPMENT LIMITED TO  
 NOTICE OF INTENT TO  
 ABANDON INTEREST IN ESTATE  
 PROPERTY AND MOTION TO  
 EXTEND DEADLINE TO ASSUME  
 EXECUTORY CONTRACTS AND  
 LEASES; REQUEST FOR  
 HEARING**

Date: June 29, 2022  
 Time: 1:30 p.m.  
 Place: United States Courthouse  
 2500 Tulare St., 5<sup>th</sup> Fl.  
 Fresno, CA  
 Judge: Hon. Jennifer E. Niemann

CASSO & SPARKS, LLP  
 13300 Crossroads Pkwy. North, Suite 410  
 City of Industry, CA 91746

1 Creditor, Kings County Development Limited (“KCDL”), submits the  
2 following Objections, Opposition and Response to the “Notice of Intent to Abandon  
3 Interest in Estate Property” (“Notice of Intent to Abandon Interest”), filed by the  
4 Chapter 7 Trustee dated June 1, 2022 and the Chapter 7 Trustee’s “Motion to  
5 Extend Deadline to Assume Executory Contracts And Leases”, also dated June 1,  
6 2022 (“Motion to Extend”). KCDL further requests a hearing on the proposed  
7 abandonment pursuant to Bankruptcy Rule 6007(b).

8  
9 **I.**

10 **INTRODUCTION**

11 The Trustee’s motion to abandon “Any and all oil, gas and/or mineral  
12 interests claimed by the Debtor Temblor Petroleum Company, LLC, including those  
13 associated with and described as the Witter Field”, assumes without any evidentiary  
14 support whatsoever, that the bankruptcy estate actually has an interest in those oil,  
15 gas and mineral rights. The Trustee has identified KCDL’s expired oil and gas lease  
16 with the Debtor, Temblor Petroleum Company, LLC (“Temblor” or “Debtor”) as  
17 one of the leases which it seeks to abandon. However, that lease terminated by its  
18 own terms. Accordingly, the Trustee has no property interest which it could  
19 abandon.

20 KCDL has been waiting for years to receive a quitclaim of the KCDL Lease.  
21 The lack of a quitclaim has created a cloud on its title to its mineral rights and, as a  
22 result, is impairing its ability to lease the property to another operator and,  
23 potentially to sell the property. While KCDL appreciates the fact that the Trustee  
24 does not want the KCDL Lease, the most appropriate course of action would be for  
25 the Trustee to perform its obligation under that lease and deliver a quitclaim to  
26 KCDL

27 ///

28 ///

## II.

**FACTUAL BACKGROUND****A. The KCDL Lease Is Not An Asset of the Debtor's Estate.**

The Trustee's Notice of Intent to Abandon Interest states that:

"The Trustee intends to abandon that are encumbered by consensual liens or otherwise claimed as exempt by the above-caption debtors' liens: Any and all oil, gas and/or mineral interests claimed by the Debtor Temblor Petroleum Company, LLC, including those associated with and described as the Witter Field."

One of the oil and gas leases claimed by the Debtor, Temblor Petroleum Company, LLC ("Temblor") was between Temblor, as lessee, and KCDL as lessor and dated October 3, 2005 ("KCDL Lease"), which affected a portion of the Northwest quarter (NW/4) of Section 21, Township 17 South, Range 17 East, M.D.B.&M. in Fresno County (the "Leased Land"). (*Declaration of Douglas Donath*. ¶ 4, Exhibit "A" [hereinafter, "*Donath Decl.* ¶ \_\_\_\_"])

As with nearly every oil and gas lease in California, the KCDL Lease could only remain in effect after the primary term expired "for so long thereafter as oil, gas, hydrocarbons or other hydrocarbon substances are produced therefrom in paying quantities." (*Donath Decl.* ¶ 7-10)

In 2018, Temblor drilled its "Harnsich-McCormick No. 5" well ("HM #5 Well") to a bottom hole location on the Leased Land. However, the well failed to produce oil or gas in paying quantities. (*Donath Decl.* ¶12) Since Temblor's completion of the HM #5 Well, no new drilling operations were commenced by Temblor on the Leased Land within six months following the completion of that well. (*Donath Decl.* ¶13)

Since oil and gas has not been produced in paying quantities from the HM #5 Well, and the well is not currently being produced in paying quantities, and Temblor failed to commence drilling operations to drill a subsequent well, the KCDL Lease

1 terminated for lack of production of oil and gas in paying quantities. (*Donath Decl.*  
2 ¶14)

3 California Civil Code Section 883.140(b) required Temblor to "...within 30  
4 days after demand therefor by the lessor, execute, acknowledge, and deliver, or  
5 cause to be recorded, a deed quitclaiming all interest in and to the mineral rights  
6 covered by the lease."

7 Accordingly, on August 7, 2019, KCDL demanded, pursuant to Section 33 of  
8 the KCDL Lease, that Temblor immediately execute, acknowledge and deliver to  
9 KCDL a quitclaim deed in recordable form surrendering all of the lessee's interest  
10 under the KCDL Lease. (*Donath Decl.* ¶15, Exhibit "B".)

11 Temblor refused to execute, acknowledge and deliver to KCDL a quitclaim  
12 deed surrendering all of the lessee's interest under the KCDL Lease. (*Donath Decl.*  
13 ¶16).

14 KCDL has now been waiting for more than two and half years for its title to  
15 be cleared through a quitclaim from Temblor, so that it can lease the property to one  
16 or more other oil companies who actually have the financial and operational  
17 capability to drill for and produce oil and gas- a capability that Temblor simply does  
18 not have. The lack of a quitclaim of the KCDL Lease with Temblor has been  
19 identified in KCDL's discussions with prospective buyers, lessees and operators as  
20 being a fundamental obstacle to moving forward with any contractual or other  
21 arrangement. (*Donath Decl.* ¶17)

22 Since the Trustee obviously has no intention to resume production and has not  
23 been able to interest a buyer in purchasing any of the Witter Field Leases, the  
24 Trustee and the estate have no recognizable legitimate interest in continuing to cloud  
25 KCDL's title to the Leased Land by refusing to quitclaim the KCDL Lease.

26 Once this case was converted to a Chapter 7 proceeding, KCDL through its  
27 attorney of record, John J. Harris, requested that the Trustee quitclaim the lease.  
28 That request was most recently documented in the letter dated May 16, 2022 to Max

1 Gardner, the Trustee's attorney of record. (*Donath Decl.* ¶18; See, Mr. Harris' May  
2 16, 2022 letter is attached to the Donath Decl. as "Exhibit C".)

3 If the Trustee does not deliver a quitclaim, KCDL will be forced to file a  
4 motion for relief from the automatic stay in order to file and prosecute a quiet title  
5 action to clear its title to the Leased Land. The Trustee would be compelled to  
6 unnecessarily incur attorney's fees and other costs in defending such an action, as to  
7 which it would have no legal or factual basis to oppose. At this point, it is unclear  
8 that the Trustee even has funds that could be utilized to defend such a lawsuit.  
9 (*Donath Decl.* ¶19)

10 Accordingly, to spare the Trustee from incurring any further unnecessary  
11 expenses, and since the Trustee clearly has no interest in retaining the KCDL Lease,  
12 KCDL asks the Court to authorize the Trustee to deliver to KCDL a quitclaim of the  
13 KCDL Lease. (*Donath Decl.* ¶20)

14 Contrary to the assertion by the Trustee in Paragraph 4 of his declaration in  
15 support of the Motion to Extend, and to the arguable extent that the KCDL Lease  
16 could be considered an "executory contract" subject to 11 U.S.C. § 365, KCDL has  
17 been and will continue to be harmed by any further extensions of the deadline to  
18 assume or reject the KCDL Lease. KCDL needs to have title cleared to its Leased  
19 Land immediately. (*Donath Decl.* ¶21)

20  
21 **III.**

22 **DISCUSSION**

23 **A. Since the KCDL Lease Is Not An Asset of the Estate, the Lease Should**  
24 **Not Be Included in Any Abandonment Order and the Trustee Should**  
25 **Be Authorized to Deliver A Quitclaim of the Lease to KCDL.**

26 Section 554 of the Bankruptcy Code allows abandonment of property that "is  
27 burdensome to the estate or that is of inconsequential value and benefit to the  
28 estate." 11 U.S.C. § 554(a). Property abandoned under this section ceases to be part

1 of the estate. Following abandonment, “whoever had the possessory right to the  
2 property at the filing of bankruptcy again reacquires that right.” Abandoned property  
3 is not property administered by the estate. *In re Dewsnap*, 908 F.2d 588, 590 (10th  
4 Cir. 1990), *aff’d sub nom. Dewsnap v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L.  
5 Ed. 2d 903 (1992); *Moses v. Howard University Hospital*, 606 F.3d 789, 791 (D.C.  
6 Cir. 2010).

7 By definition, the Trustee cannot abandon property which is not part of the  
8 estate. It is an "elemental rule" of bankruptcy law that a trustee or debtor in  
9 possession acquires no greater right or title to property than the debtor and takes the  
10 property subject to the same conditions and burdens as the debtor. (*In re Raborn*,  
11 470 F. 3d 1319, 1323 (11th Cir. 2006). The scope of the bankruptcy "estate" is  
12 defined by Section 541 of the Bankruptcy Code. 11 U.S.C. §541. Section 541 cannot  
13 create a right or title in the debtor that does not exist under state law. Property  
14 interests are created and defined by state law absent a countervailing federal interest.  
15 (See, *Delaware v. New York*, 507 U.S. 490, 501-02, 113 S. Ct. 1550, 1557, 123 L.  
16 Ed. 2d 211(1993); *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59  
17 L. ed. 2d 136 (1979); *In re Thorpe*, 546 B.R. 172, 176 (Bankr. C.D. Ill.2016); *In re*  
18 *Seegerstrom*, 247 F. 3d 218, 223 (5th Cir. 2001) ("*Butner* espouses the principle that  
19 property rights within a state should remain the same within and outside of  
20 bankruptcy"). Property rights existing before bankruptcy in persons other than the  
21 bankrupt must be recognized and respected in bankruptcy.

22  
23 **B. Terminated Oil and Gas Leases Are Not Assets of the Estate.**

24 11 U.S.C.A. § 541(b)(2) provides that the“ Property of the estate does not  
25 include--

26 “any interest of the debtor as a lessee under a lease of nonresidential real  
27 property that has terminated at the expiration of the stated term of such lease  
28 before the commencement of the case under this title, and ceases to include

1 any interest of the debtor as a lessee under a lease of nonresidential real  
2 property that has terminated at the expiration of the stated term of such lease  
3 during the case; ....”

4 An oil and gas lease which has terminated by its own terms either prior to the  
5 bankruptcy, or during the pendency of a bankruptcy is **not** the property of the estate.  
6 (*In re Riverwood Gas & Oil, LLC*, 601 B.R. 685, 690 (Bankr. C.D. Cal. 2019)

7 Under applicable California law, the KCDL Lease expired by its own terms  
8 for lack of production in paying quantities. As the Court held in *Montana-Fresno*  
9 *Oil Company v. Powell*, 219 Cal.App.2d 653, 659 (1963): “**An operating oil lease is**  
10 **both a conveyance and a contract** designed to fit the needs of the owner of the land  
11 and the operator of the oil properties in making them productive. As such, it  
12 contains traditional conveyancing portions and particularly phrased contractual  
13 portions.” (Emphasis added.) Following a long line of California authority, the  
14 Court in *Montana-Fresno* ultimately held at 219 Cal.App.2d 665-667 that the lease,  
15 the “fee simple determinable interest”, automatically terminated upon the  
16 occurrence of the stated condition, the lack of production in “paying quantities” and  
17 that the complete cessation of production ended the term of the lease. (See, also,  
18 *Lough v. Coal Oil, Inc.*, 217 Cal.App.3d 1518, 1528-1529 (1990); *San Mateo*  
19 *Community College Dist. v. Half Moon Bay, L.P.*, 65 Cal.App.4th, 401, 410 (1998);  
20 *Renner v. Huntington Hawthorne Oil and Gas Co.*, 39 Cal.2d 93, 98-99 (1952).)

21 Because the termination of a mineral lease for lack of production is self-  
22 operative under California law, termination is not prevented by the automatic stay  
23 arising from the filing of the bankruptcy petition. (*In re Trigg*, 630 F. 2d 1370, 1373  
24 (10th Cir. 1980) [self-operative termination of mineral lease not barred by automatic  
25 stay]; *Good Hope Refineries, Inc. v. Benavides*, 602 F. 2d 998 (1st Cir. 1979) [Texas  
26 mineral lease terminated automatically for failure to tender delay rentals, without  
27 regard to bankruptcy]).

28 Among the oil and gas leases which the Trustee has identified as an asset in



1 the Witter Field is the KCDL Lease. As set forth in the Declaration of Douglas  
2 Donath filed in support of this Opposition demonstrates, Temblor has *never*  
3 produced oil and gas in paying quantities and the KCDL Lease terminated for lack  
4 of production of oil and gas in paying quantities. (*Donath Decl.* ¶¶7-14.) As a result,  
5 Temblor no longer has a working interest in the KCDL Lease and that interest could  
6 not be considered an asset of the estate.

7 All that remains of the KCDL Lease is the obligation to surrender the lease  
8 back to KCDL.

9 The execution of a quitclaim deed surrendering the KCDL Lease does not  
10 necessarily import that the quitclaiming party possesses any interest at all. (*In re*  
11 *Atlantic Gulf Communities Corp.*, 326 B.R. 294, 300 (Bankr. D. Del. 2005).) A  
12 quitclaim is a release of whatever present title or interest the party executing the  
13 quitclaim has in the property quitclaimed, and when made by the owner of a  
14 dominant tenement, such as an oil and gas lease, to the owner of the servient  
15 tenement operates as a release and extinguishment. (*Westlake v. Silva*, 49 Cal. App.  
16 2d 476, 478 (1942).) Customarily, the release is in the form of a quitclaim deed by  
17 the owner of the easement to the owner of the servient tenement. (6 *Miller & Starr*,  
18 Cal. Real Est. § 15:74 (4th ed.)) Accordingly, the Trustee would not be selling or  
19 transferring any interest to KCDL, but rather would simply acknowledging the  
20 termination of the KCDL Lease and the surrendering and releasing any lessee's  
21 interest by operation of law, thereby extinguishing the lease.

22 Considering that the Trustee does not want to retain the lessee's interest in the  
23 KCDL Lease, the most appropriate course of action would be for the Trustee to  
24 surrender the lease through the execution of a quitclaim in recordable form. To the  
25 extent an order of the court is necessary, KCDL is prepared to stipulate to an order  
26 authorizing the Trustee to execute such a quitclaim.

27 ///

28 ///



**C. A Further Extension of the Deadline to Assume or Reject Executory Contracts and Leases Is Not Warranted.**

Most courts which have addressed the issue have held that oil and gas leases are *not* among the types of leases or contracts subject to 11 U.S.C. § 365 which can be assumed or rejected by the Trustee. (*See, In re Heston Oil Co.*, 69 B.R. 34, 36 (N.D. Okla. 1986); *Matter of Topco, Inc.*, 894 F.2d 727, 740, fn. 17 (5th Cir. 1990); *In re Sandridge Energy, Inc.*, No. 16-32488, 2018 WL 889357, at \*10 (Bankr. S.D. Tex. Feb. 5, 2018)) [oil and gas lease is *not* that of an executory contract for purposes of 11 U.S.C. § 365].

Nevertheless, assuming for the sake of argument that the Trustee’s motion is proper with respect to the KCDL Lease, the Trustee has already requested and obtained multiple extensions. It is simply not accurate to assert that “no harm or interest will occur to other parties to the executory contracts by the grating of this motion”, as the Trustee asserts in his declaration. KCDL has been and will continue to be harmed by the delay. KCDL needs to have title cleared to its Leased Land immediately. (*Donath Decl.* ¶21). Accordingly, the Trustee’s motion should be denied.

**CONCLUSION**

For the foregoing reasons, Creditor, Kings County Development Limited, requests that this Court enter an order sustaining its objections and denying the approval of the abandonment of the KCDL Lease. Instead, the Court can and should authorize the Trustee to execute a quitclaim of the KCDL Lease in recordable form so that KCDL can finally clear title to is property.

///

///

///

///

1 KCDL consents to the Court’s resolution of disputed material factual issues  
2 (Fed. R. Civ. P. 43(c), Fed. R. Bankr. P. 9017 and Local Rule 9014-1(f)(1)(B).)

3  
4 Dated: June 14, 2022 CASSO & SPARKS, LLP

5  
6 By: /s/ John J. Harris  
7 John J. Harris  
8 Attorneys for  
Kings County Development Limited

4874-0921-5525, v. 2

CASSO & SPARKS, LLP  
13300 Crossroads Pkwy. North, Suite 410  
City of Industry, CA 91746

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28